IN THE

Supreme Court of the United States

IN BANKRUPTCY.

October Term, 1902. No. 100.

EDWARD D. PAGE, BANKRUPT,
Appellant,

vs.

CHARLES W. EDMUNDS, TRUSTEE,
Appellee.

Appeal from the United States Circuit Court of Appeals for the Third Circuit.

BRIEF OF APPELLANT.

Statement of Facts.

The appellant, Edward D. Page, is a resident of the city of Philadelphia, and is a member of the Philadelphia Stock Exchange, in good standing, having been a member thereof since the year 1880.

On the sixteenth of November, 1899, he was adjudged a voluntary bankrupt in the District Court for the Eastern District of Pennsylvania, and the cause was referred to Alfred Driver, Esq., Referee in Bankruptcy.

In filing his debtor's petition in said proceedings, he did not include his membership in the Philadelphia Stock Exchange as an asset of his estate in the schedules attached thereto.

His trustee in bankruptcy, however, caused the membership to be appraised, and petitioned the referee for an order of sale of the same for the benefit of creditors of his estate; and the referee, after a hearing, ordered that the trustee sell for the benefit of creditors, at public auction, the seat or membership of Edward D. Page, the bankrupt, and all his right and interest therein, subject to the Constitution and By-laws of the Philadelphia Stock Exchange regulating membership therein. Whereupon the bankrupt petitioned for a review by the Court on the ground that the referee erred in ordering such sale, in that the bankrupt's membership in this Exchange was not property or assets for the payment of debts, under the laws of the State of Pennsylvania, his domicile, and therefore properly was not included by bankrupt in the schedules attached to his debtor's petition as part of his assets.

The bankrupt, on examination before the referee, stated that under the Constitution and By-laws of the Exchange he could sell his seat, but if the purchaser was not elected to membership, it was no sale. The Constitution and By-laws were produced in evidence, and described the Philadelphia Stock Exchange to be an unincorporated voluntary association of individuals, limited in number to 230, organized to establish and maintain convenient quarters, where members can meet and transact their mutual business as brokers of stocks and securities, under a prescribed Constitution and By-laws signed, previous to admission, by each member, expressing the contract by which he has agreed to be bound, governed and controlled in his actions, duties, rights and privileges as such; providing for the payment of annual dues and assessments, and further providing for a gratuity fund, to be paid upon the death of a member to his widow, which measure his rights and obligations to continue a member, and upon ceasing to be a member by competent judgment and action of the Governing Board, he relinquishes all further interest in the association, except as given by the Constitution and By-laws. Its principal object is the promo-

tion of the convenience of its members by furnishing facilities merely to aid them in their business transactions, and does involve any combination or community of profits from the business transacted by members. The exclusive power and authority of choosing associates is in the members as a body, governed by no uniform rules of eligibility; holding a protective power of rejection against candidates, if objectionable to certain of the members, or with whom they do not desire to associate in the confidential relationship necessarily involved in membership.

The Constitution and By-laws express no power whereby an individual member can by his own act transfer or dispose of commercially to another person any privilege which he is entitled to enjoy by reason of his membership, as a sale, payment, pledge, mortgage, gift, or security. Any money value considered as attaching to membership is simply an incident of its enjoyment, coming into being only upon the occurrence of an expulsion, an election and accepted resignation, or the death of a member, which enables the Exchange by its voluntary action to dispose of the membership seat. The resultant fund thus created primarily belonging to and for the benefit of creditor members, and the residue, if any remains, is paid over by the Exchange to the owner. Otherwise, membership can in no way be used or enjoyed except in the exercise of personal privileges contemplated in the purposes of organization, which, in the language of the Constitution, signify that the rights of continuing membership shall outlive and not be affected by proceedings in bankruptcy. Article 12, Section 6, of the Exchange Rules (Record, p. 6) provides:

> "Any member who shall be declared a bankrupt shall, *ipso facto*, be suspended from the Stock Exchange; but a suspended member presenting a certificate of discharge under the United States Bankruptcy law, becomes eligible under the rules of reinstating suspended members."

Those articles of the Constitution of the Exchange, which in the opinion of the referee, relate to the question at

issue, are set forth in his report certified to the Court, and appear in the Transcript of Record on pages 4, 5 and 6.

Argument thereon was had, and on June 19, 1900, the District Court filed its opinion, approving the action of the referee and dismissing the objections.

Upon petition for review by the Circuit Court of Appeals for the Third Circuit, the Court, on March 25, 1901, filed its decree affirming the order of the Court below because of the principle thus stated (Record, p. 13):

> "The material inquiry before us is, not whether the seat could have been attached or taken in execution, but whether it was not property which Page prior to his bankruptcy could have transferred. The Bankrupt Act vests in the trustees the title not only to property of the bankrupt which prior to the filing of the petition 'might have been levied upon and sold under judicial process against him,' but, as has been stated, to property which prior to that time 'he could by any means have transferred.' The membership or seat of the bankrupt in the Exchange certainly was of pecuniary value to him, and, subject to the restrictions and limitations of the Constitution, could have been transferred by him to another."

Specifications of Error.

The Specifications of Error relied on are as follows:

First.—Under the laws of the State of Pennsylvania, bankrupt's domicile, established by rulings of the Supreme Court of the State, membership in the Philadelphia Stock Exchange is a mere personal privilege of the member, and in the eye of the law does not constitute property or assets for the payment of debts in any form.

Second.—The Court erred in not recognizing and following the settled law of Pennsylvania, declaring membership in the Philadelphia Stock Exchange to be exempt from the claims of creditors.

Third.—The Court erred in directing sale of bankrupt's membership in the Philadelphia Stock Exchange, because such order if effective would deprive him of an exemption prescribed by the State law in force at the time of his petition of the State wherein he had his domicile for the six months or the greater portion immediately preceding the filing of the petition.

Fourth.—The Court, referring to the cases Thompson *vs.* Adams, 93 Pa., S. R. 55, and Pancoast *vs.* Gowan, 93 Pa., S. R. 66, erred in its conclusion "The points actually determined in these two cases do not support the unqualified dictum in one of them, that 'the seat is not property in the eye of the law.'"

Fifth.—The Court erred in the expression of its opinion "The material inquiry before us is, not whether the seat could have been attached or taken in execution, but whether it was not property which Page prior to his bankruptcy could have transferred. The Bankrupt Act vests in the trustee, the title not only to property of the bankrupt, which prior to the filing of the petition 'might have been levied upon and sold under judicial process against him,' but as has been stated, to property, which prior to that time, 'he could by any means have transferred.'"

Sixth.—The Court erred in holding that membership in the Philadelphia Stock Exchange was tangible property for the payment of debts, as set forth in its opinion: "It is true that the approval of the proper authorities in the Exchange was necessary to a valid transfer of the membership, and that as such approval might or might not be withheld, this requirement might prevent a transfer to a given person. This contingency possibly affected the value of the seat for the purposes of sale, but while it is restricting did not destroy its transferability. The membership was more than a mere privilege. It was property vested in Page and transferable to any person meeting the approval of the Exchange. On principle we perceive no reason why the

seat of the bankrupt was not embraced in 'property which, prior to the filing of the petition, he could by any means have transferred.'"

Seventh.—The Court erred in recognizing with force of precedence the cases Hyde *vs.* Woods, 94 U. S. R., 523; In Re Ketchem, 1 Fed. R., 840; In Re Werder, 15 Fed. R., 789, because all these decisions related to Stock Exchanges of States other than Pennsylvania, in which the State Courts themselves have held memberships in these exchanges, under rules of their respective charters, constitutions and by-laws, to constitute property. And the case Sparhawk *vs.* Yerkes, 142 U. S. R., 1, cited by the Court in support of its opinion though relating to the Philadelphia Stock Exchange, did not embrace a proposition of law or fact analogous to the present cause at issue.

Points for Argument.

The question for the decision of the Court is, whether or not, upon the facts of the cause presented, the creditors of the bankrupt are entitled to his active membership in the Philadelphia Stock Exchange, as an asset of his estate in bankruptcy.

To uphold an affirmative doctrine two legal conditions must be found to exist: as follows—

1. Such active membership must, under existing law, be "property" of the bankrupt, which he, himself, could by any means transfer.

2. Even though it may constitute "property," in the eye of the bankrupt law, such membership must be "unexempted" to the debtor and subject to the recourse of creditors, under the laws of the State of bankrupt's domicile.

Argument for Appellant.

The claim of the appellant, in support of the position that active membership in the Philadelphia Stock Exchange

is not an asset of his estate for the benefit of creditors in bankruptcy, is based upon the common law in force in the State of Pennsylvania, his domicile ; and its exclusion as an asset for the payment of debts under a logical construction of the bankruptcy act. Therefore, on the Court's decision depends the effect of bankruptcy proceedings upon the validity of the substantive laws of the various States, so far as such laws are established by decisions of the State Courts, as contra-distinguished from acts of their Legislatures, in pronouncing rules of property existing under their State Constitutions.

And also the Court's decision is of importance throughout the United States in establishing a uniform rule for the interpretation of the term "exemption" as used in Section 6 of the Bankrupt Act of 1898, where such exemption exists, not by virtue of an act of the State Legislature, but under decisions of the Highest Court of the State of the bankrupt's domicile, interpreting the general State law relative thereto.

The purview of the National Bankruptcy Act of 1898 is purely remedial and administrative, Congress having in contemplation purposes of uniform and equal or ratable distribution of assets, in event of debtor's insolvency, amongst creditors, in avoidance of unjust preferences and frauds, by general law throughout the United States, reposing in the Federal Courts exclusive jurisdiction and control of bankruptcy causes, in precedence over State Courts, but limiting this jurisdiction, upon questions involving Rules of Property in the several States, to an observance of and conformity with existing laws governing the same; and expressly directing the allowance to bankrupts of exemptions prescribed by State laws of their respective domiciles in force at the time of filing the petition.

The act is not a punitive measure and recognizes no distinction between voluntary and involuntary bankruptcy. The constitutional requirement that the system of bankruptcy shall be uniform throughout the United States is fulfilled

where the bankrupt law operates in each State upon whatever would have been liable to execution or available to the recourse of creditors, if the bankrupt law had not been enacted; though the subjects of its operation may not in all respects be the same in the different States, and although the States may vary widely in the extent and character of their exemptions, yet what property remains unexempt, the bankruptcy law uniformly distributes amongst creditors. This rule does not violate, but carries such provision of the Constitution into effect, thus preserving the harmony and spirit of comity which should always exist between the Federal and State governments.

The Philadelphia Stock Exchange is an unincorporated society, in its general nature and character nothing more or less than a club for social and business advantages derived from the close association of its members, having for its rules of government a constitution and by-laws, which each candidate for membership pledges himself to observe and abide by in the enjoyment of its privileges.

The clause of the Constitution relating to admission is as follows, Article V, Section 4 (Record, p. 4):

> "A Committee on Admissions, consisting of five members, to which all applications for membership, transfer of membership, and re-admission of suspended members shall be referred. It shall be its duty to inquire into the general standing of the applicant, and make report thereon to the Governing Committee within one month of the presentation of the application. Until the Committee makes a report favorable to the admission of the applicant, he shall not be voted for as a member, unless upon the written application of seven members of the Governing Committee to the President, made within five days after the Committee's report has been presented; in which case the Governing Committee may, by a two-thirds vote, reverse the report of the Committee, and such reversal shall have the same effect as if the Committee's report had originally been favorable. If the report be favorable, the name of the candidate shall be posted in the Stock Exchange, and

notice given that a ballot will be taken at the next stated meeting of the Governing Committee, in order that every member of the Exchange may have an opportunity of objecting to the candidate's election; such objection shall be in writing, to the President of the Governing Committee. The election of candidates for membership shall be held by the Governing Committee, but no election shall be valid unless at least eighteen ballots be cast; and, if five ballots be cast against a candidate he shall be declared not elected. Whenever it shall appear to a majority of the Committee on Admissions that a wilful mis-statement upon a material point has been made to it by an applicant for admission or re-admission, it shall report the case to the Governing Committee, when, by a two-thirds vote of the members present, the offending party shall be indefinitely suspended or declared forever ineligible for admission, as the case may be."

The feature of the Constitution of the Exchange which, it is argued by the bankrupt's trustee in this controversy, distinguishes membership in it from that in an ordinary social club is the fact that the member is given the right to sell his membership under Article XI, Section 4 (Record, p. 5):

"Any member wishing to sell his membership shall have the right to do so, provided he has no unsettled contracts with or claims against him by any member of the Stock Exchange for transactions arising in or relating to the business of banker or a stock or exchange broker; but, where the Arbitration Committee shall determine that any claims or contracts exist, the Governing Committee may, except in cases of insolvency, refuse to permit the membership to be sold until such claims or contracts are, in its opinion, satisfactorily settled.

"The proceeds of the membership, if sold, shall, after deducting all charges due to the Exchange, to be determined, in cases of controversy, by the Arbitration Committee, belong to the owner's creditors in the Exchange, in proportion to the amount of their respective claims, determined by the Arbitration Committee, as hereinbefore provided in Section 5, Article V, and be paid accordingly; and the remainder, if any, shall be paid to the owner."

It is claimed by the Trustee, this creates in such membership an element of property within the meaning of the Bankrupt Act, causing its passage by operation of law for the benefit of creditors, as property which the bankrupt could have transferred.

Whereas, such feature of the Constitution, as it exists, does not change membership from merely a personal privilege of the member, as in a club, for the following reasons: The candidate, before becoming a member, expressly agrees to be bound by the Constitution and By-laws, which provide for the payment of annual dues and assessments during membership, with the anticipated continuance during the life of the member, unless expelled by action of the Exchange for an infraction of the rules, or released by its favorable, discretionary action upon his request that his membership be transferred, in which event the elected candidate pays into the treasury of the Exchange his initiation fee and such additional sum as may have been agreed upon as the value of his election to membership. The fund thus created does not belong to the individual, but is the property of creditor members, and is applied by the Exchange to the settlements of obligations to the other members, under its rules, and the balance only, if any, is paid over to the retiring member.

It will be thus seen that, although spoken of as a sale by the member in Article XI, Section 4, *supra*, it is really the action of the Exchange itself, by virtue of its arbitrary controlling power governing transfers and elections, exercised in the discretion of the Governing Committee under Article V, Section 4, *supra*, not exclusively for the benefit of the retiring member, but executed as Trustee with discretionary powers conferred by the Constitution for the best interests and welfare of the entire Exchange, under the initial agreement of membership. The Exchange can by no means deprive the member of the free exercise of his privileges therein, except for a breach of its rules; nor can the member by any act whatever of his own renounce his membership and relieve himself of any of his obligations

therein; and though the member may repeatedly request that such transfer be made, and nominate his successor, all his obligations and privileges of active membership continue unchanged until by favorable action, over which he has not the slightest governance or control, the Exchange sees fit to release him from membership.

Proprietorship of a seat by a person other than the recognized occupier is not contemplated by the provisions of its Constitution, and if the Association was to permit such a holding, it would directly destroy its most important objects and the mutual protection given to the claims of fellow members. Membership in its origin had no appreciable value, and the initiation fee is the only payment required by the Rules, other than the customary annual dues and assessments of a Club. By reason, however, of the limit in number of members and the past development and growing influence of the organization, a money value is considered as attaching to membership; although as a vested present worth of the member, it can only actually exist after a transfer has been authorized by the Governing Committee, and the membership is in process of liquidation by the Exchange.

The bankrupt is a member in good standing, and it is not shown that he had any unsettled obligations to the Exchange or its members, and therefore no action of expelling right exists; nor has he any right of action against it for withholding any privileges from him under the agreement of membership, which has in no way been violated by either party to it.

Bouvier's Law Dictionary gives the following definition of the word "property."

> "The right and interest which a man has in lands and chattels to the exclusion of others. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases, provided he makes no use of them prohibited by law."

The author also announces the rule that property, considered as an exclusive right to things, contains not only the

right to use these things, but the right to dispose of them as the owner may desire.

Jacobs' Law Dictionary expresses the meaning of "property" to be

> "The highest right a man can have to anything, being used for that right which any one has in lands and tenements, goods or chattels, which no way depends on another man's courtesy."

Burrell's Law Dictionary gives as its meaning:

> "The unrestricted and exclusive right to a thing: the right to dispose of the substance of a thing in every legal way, to use it and exclude every one else from interfering with it."

Membership in the Philadelphia Stock Exchange is neither land nor a chattel, nor can a member dispose of his membership as he pleases. A sale or disposal can only be made to such purchaser as the Board, through its Governing Committee, may previously determine upon and designate, and through its action alone a transfer of membership can be effected.

If, then, membership is property, it does not fall within the definition given; and the same may be said in regard to membership in a Masonic lodge, or a social club, or of the interest of a beneficiary in the case of a spendthrift trust.

In the State of Pennsylvania, under whose laws the Philadelphia Stock Exchange was organized and exists, the status of its membership, both as between members and as between members and strangers, by a series of controversies, has been clearly defined by decisions of the Supreme Court of the State, its Court of Last Resort, which declare and maintain that membership in this Exchange is not property in the eye of the law, and it is not subject to execution in any form, that it is a mere creation of its members, and is held and enjoyed as a personal privilege with all the limitations and restrictions which the Constitution of the Exchange puts upon it.

Thompson *vs.* Adams, 93 Penna. St. Rep., 55.
Pancoast *vs.* Gowan, 93 Penna. St. Rep., 66.

In Thompson *vs.* Adams, the following statement of facts was presented—Thompson furnished to Richards the money with which to purchase a membership seat in the Philadelphia Stock Exchange. Richards subsequently died indebted to sundry members of the Exchange and his seat was sold by it under its rules, to satisfy these claims, which were in excess of and exhausted the proceeds realized. Thompson sued Adams, *et al.*, trading as the Philadelphia Stock Exchange, to recover the proceeds of the seat in the treasurer's hands, claiming to be the equitable owner of the seat, as against the creditors of Richards in the Exchange.

The Court fully discussed the merits of the controversy in the following language; being its entire opinion:

> "The Constitution and Articles of a voluntary Association such as the Philadelphia Board of Brokers are law as to the members. The plaintiff below was not a member, but had furnished the money by which Richards obtained a seat. His contention is that he is the equitable owner of the seat and had title to what was received for it, and that the defendant had no right to apply the proceeds to the debts due by Richards to other members, in pursuance of the Constitution of the Club. But why not? Richards was the member of the Board, the legal owner of the seat, and the plaintiff an entire stranger, unknown to the Association. The members give credit to each other in part, no doubt, upon the faith of the liability of a member's seat to them for his debts. There is nothing unlawful or unreasonable in this regulation. The seat is not property, in the eye of the law, it could not be seized in execution for debts of the members. It is the mere creation of the Board and of course; was to be held and enjoyed with all the limitations and restrictions which the Constitution of the Board chose to put upon it."

The case Pancoast *vs.* Gowan involved an attachment against the Philadelphia Stock Exchange, sought by a creditor of a member in good standing, to compel the sale of his seat in satisfaction of a judgment debt, which was

refused on Appeal to the Supreme Court, after an exhaustive examination by the Court of the Exchange Rules.

> *Per Curiam.*—"A seat in the Board of Brokers is not property subject to execution in any form. It is a mere personal privilege, perhaps more accurately a license to buy and sell at the meetings of the board. It certainly could not be levied on and sold under a *fi. fa.* The sheriff's vendee would acquire no title which he could enforce; nor is it within either the words or the spirit of the Act of June 16, 1836, Sect. 35, Pamph. L., 767, providing for attachment on judgment. Whether the proceeds of the sale of the seat in the hands of the treasurer of the board and payable to the defendant, according to the regulations and By-laws of the board, could be thus reached is entirely a different question. This and no more is what we understand to have been decided by the Supreme Court of the United States in Hyde *vs.* Woods, 4 Otto, 525, where Mr. Justice Miller says: 'If there had been left in the hands of the defendants any balance after paying the debts due to the members of the board, that balance might have been recovered by the assignee in bankruptcy.'"

The lower Court erred in its conclusion: "The points actually determined in these two cases do not support the unqualified dictum contained in one of them that 'the seat is not property in the eye of the law.'" (Record, p. 13.)

The former case involved a controversy over the proceeds of a liquidated membership, in the hands of the Exchange, yet the plaintiff's position if maintainable, was entirely dependent upon the force and legal effect of an alleged assignment of the seat to him by the member during active membership; and the latter case involved a direct question of the status of active membership as a property asset of the member with regard to his obligations to non-members. Both embodied the direct question of the transferability of active membership as a result of the action of an individual member; and in order to reach a decision in either case it was necessary that the Court should ascertain and declare upon the general status of the Exchange in the

community, the force and effect of its regulations over the relationship between members, and the status of such membership as the property right in relation to the business engagements of members with strangers.

And both decisions clearly and distinctly designate that active membership therein does not constitute property ; and in express terms declare that it is not subject as such to the recourse of creditors, other than exchange members.

The cases were argued on appeal at about the same time, and the opinions of the State Supreme Court were handed down within a few days of each other, in the order and with expression which would signify intention of the Court that the decisions should comprehensively establish the general status of the Exchange, and its members, under the law of Pennsylvania.

In the Federal case *in re* Sutherland, 6 Bissel, 526, involving the passage of membership in the Chicago Board of Trade to the assignee in bankruptcy, the Court in rendering decision, said :

> " I am of the opinion that the bankrupt's membership in this board being in the nature of a franchise, title or privilege does not vest in or pass to his assignee and cannot be treated as a part of his assets.
>
> " It confers no right of property, but only the right to trade upon the board, frequent its chambers and exchanges, participate in the information, and avail himself of the remedies given to members under the By-laws. But he cannot sell these privileges to a stranger without the consent of the board through its board of directors, and then only on certain conditions."
>
> " The certificate expresses nothing which the Assignee can use, except by the favor and consent of others."

In the more recent case of Barclay *vs.* Smith, 107 Ill. St. Rep., 349, the Supreme Court of that State, in an exhaustive opinion remarking upon and following the Pennsylvania decisions above cited ; held—that membership in

the Chicago Board of Trade was not property which could be subjected to the payment of debts by process of law, or order, or decree of Court; that the right of membership was not a right which the member could dispose of as he pleased, nor could it be enforced in favor of a purchaser or assignee by the Courts. It has none of the elements of property to render it liable to judicial sale; it is a right which may be regarded as valuable, but which cannot be divested or destroyed except by the Board itself, under powers conferred by its Constitution and By-laws.

Mr. Justice CRAIG delivered the opinion of the Court, in language expressively pertinent to the present cause; set forth in full, as follows:

> "A petition for a rehearing has been filed in this case, in support of which we have been favored with an elaborate argument, in which it is urged that the decision rendered by this Court is not in harmony with the current of authority on the question involved. We have given the argument of the petitioner a careful consideration, but we are unable to arrive at a different conclusion from that reached on the original argument of the case—
>
> "In the petition for a rehearing it is said:
>
> "Appellee does not claim that Barclay's membership is property that he could levy on by attachment, or execution or garnishment, at law, but he does claim that the 'incorporeal right' which Barclay has to a seat on the Board of Trade is property,—valuable property, and can be reached in chancery, subject only to the prior claims of his co-members of the board for debts contracted in the regular course of business on the exchange.
>
> "It is true that, under our statute, certain assets of a judgment debtor not liable to be levied upon and sold under execution as property, strictly speaking, may be reached by a judgment creditor's bill, as money, things in action due to the judgment debtor, or held in trust for him; but does a certificate of membership in the Board of Trade fall within this species of property?
>
> "We have been referred to Hyde *vs.* Woods, 4 Otto, 523, as an authority sustaining position of the

appellee. That was a case brought by the assignee in bankruptcy of Thomas W. Fenn, to recover the proceeds of the sale of the seat of Fenn in the San Francisco Stock and Exchange Board, which came into the hands of the defendants within four months before the filing of the petition in bankruptcy. The Court held that the plaintiff could not recover; that the proceeds of the sale of the seat were properly disposed of by the defendants in the manner provided for by the articles of incorporation.

"It is true the Court, in its opinion, says that the incorporeal right which Fenn had to his seat was property, but as we understand the decision, that was not the question involved in the case. The seat of Fenn had been sold and counted into money, and the action was brought by the assignee to recover that money in the hands of the third person (namely the Exchange). It was not a proceeding, as this is, to compel a certificate of membership to be delivered over to an officer of the Court and to obtain a decree ordering such officer to sell such certificate.

"If Barclay, the appellant, had sold his certificate of membership on the Board of Trade, and had converted it into money, and this was a proceeding to reach that money in the hands of a third party in satisfaction of a judgment or for the benefit of creditors, then the case in principle would be like the one cited, and the case cited could be relied upon as authority. But such is not the case. Had the certificate been counted into money, and this was a proceeding to reach that money, we would have no difficulty in holding that the action was well founded; but the power of a court of chancery to divest a man of a mere right to transact business on the Board of Trade, and sell that right in satisfaction of a judgment, on the ground that such right has value, is going farther than we think the rules of equity will warrant.

"We have also been referred to Powell *vs.* Walden, 89 N. Y., 328, as an authority on the question involved. In that case one Robbins, who was a member of the New York Cotton Exchange, pledged his certificate of membership, which entitled him to a seat, as collateral security for his note given for a loan of money. The amount due on the note was tendered the holder, and he

refused to accept the money and surrender the certificate, when Powell, as receiver, appointed in supplementary proceedings on execution against Robbins, brought a claim against the holder of the certificate to redeem. The Court, following Hyde *vs.* Woods, *supra*, which is cited to sustain the position, held that the certificate was property. The articles of the Cotton Exchange are not set out in the statement of the case or opinion, but it seems manifest from the opinion of the Court that they differ widely from the articles of the Board of Trade. In the opinion it said:

"'It was something more than a mere personal license or privilege, for it could pass from one to another of a certain class of persons, and belong as full to the assignee as it did to the assignor. That characteristic gave it not only value, which might attach to a bare personal privilege, but market value, which usually belongs only to things which are the subject of sale. It could be transferred from hand to hand and all the time keep its inherent value and be as freely and fully enjoyed by the permitted purchaser as by the original owner.'

"A certificate of membership in the Board of Trade cannot be transferred by any member at any time or to any person he may see proper to select. Under the By-laws a transfer can only be made to a person who may be approved by a board of directors. The board reserved the power to prevent any transfer of sale which it might think best; hence a certificate of membership could not be sold and transferred in the market from hand to hand, as seems to be authorized by the Cotton Exchange. If a certificate of membership in the Board of Trade was subject to sale and transfer by a member at his will and pleasure, as seems from the opinion to be the case in the Cotton Exchange, we might not hesitate to hold, as did the Court of Appeals, that it could be reached on creditor's bill in satisfaction of a judgment, but such is not the case.

"We have also been referred to several cases decided in the United States District Courts, but it will not be necessary to consider them here. Those cases are mainly predicated upon Hyde vs. Woods, *supra*, which, as we have attempted to show, is so different in its facts from this case that it cannot be regarded as an authority.

"But even the decisions in the District Courts have not been harmonious. In the matter *in re* Sutherland, 6 Biss., 526, where a certificate of membership in the Board of Trade of Chicago was involved, it was expressly held not to be property. In concluding, the Court said: 'I am of the opinion that the bankrupt's membership in this Board, being in the nature of a franchise, title or privilege, does not vest in or pass to his assignee, and cannot be treated as a portion of his assets.'

"Section 6 of the charter of the Board declares: 'Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the rules, regulations and By-laws thereof.' Under this section of the charter, and the By-laws adopted under it, no person can become a member of the Board except such as the Board may see proper to admit. It makes no difference what may be his standing, either morally, intellectually, or as a business man, he cannot become a member without the consent of the Board; in other words, the Board has been empowered by the Legislature to determine for itself who shall be its associates.

"We do not understand that a Court of Equity or any other Court, has the right to determine who shall be a member of the Board, and entitled to enjoy the rights and privileges conferred by the Legislature on that body, and yet we are asked to hold that the Circuit Court had the right to take from the appellant his membership, and sell it in the market to another—What could be gained by a sale unless the purchaser could be invested with the right to a seat on the Board? Is a Court of Equity created to render a decree in a case which it is powerless to enforce? We have never understood that Courts of Equity were organized to render decrees which could be of no practical benefit to any person, and which could not be carried out and enforced.

"Gallager *vs.* Lane, 16 Blatchy, 410 (a case cited by appellee in support of his petition for a rehearing) Choate, Justice, in delivering the opinion of the Court, said: 'In an unreported case in this district Judge Blatchford refused to make an order for the sale at auction of a seat in the Stock Exchange, solely, how-

ever, on the ground that he would not permit a public sale to be made, under the sanction of the Court, in a case where the assignee could not undertake, with the purchaser, to deliver the thing sold.' There is much wisdom in this remark.

"As we have seen, a purchaser, should a sale of the certificate be ordered, could acquire no right to a seat unless the Board saw fit to admit such purchaser, and a Court ought not to be required to render a decree that could be of no practical benefit to any person.

"It is contended that the two Pennsylvania cases cited in the opinion are not authority in this case. In one of the cases (Pancoast *vs.* Gowan, 93 Pa. St., 66) it is said: 'A seat in the Board of Brokers is not property subject to execution in any form. It is a mere personal privilege, perhaps more correctly a license, to buy and sell at the meetings of the Board. It certainly could not be levied on or sold under a *Fi. fa.* The Sheriff's vendee would acquire no title which he could enforce. Nor is it within either the words or the spirit of the Act of June 16, 1836, providing for attachment on judgment. Whether the proceeds of the sale of the seat in the hands of the Treasurer of the Board, and payable to the defendant according to the regulations and By-laws of the Board, could be thus reached, is an entirely different question. This, and no more, is what we understand to have been decided by the Supreme Court of the United States in Hyde *vs.* Woods, 4 Otto 525, where Mr. Justice Miller says: 'If there had been left in the hands of the defendants any balance, after paying the debts due to the members of the Board, that balance might have been recovered by the assignee in bankruptcy."

"We supposed this and the other case had a direct bearing on the question.

"Indeed this case cites Hyde *vs.* Woods, the leading case upon which petitioner relies, and shows plainly, as we think, that it has no bearing in a case like the one under consideration.

"It will not, however, be necessary to discuss the question further. We are satisfied that the conclusion reached in the original hearing was correct, and the petition for rehearing will be dismissed."

This decision was reaffirmed in the later case of Weaver *vs.* Fisher, 110 Ill. St. Rep., 146; although under facts embodying fraud the Court expressed somewhat different opinion—where a miller employed an agent to manage the financial part of his business for him, and furnished him a certificate of membership in the Board of Trade of the City of Chicago (a corporation) to enable the transaction of that part of the business more advantageously, and such agent when he left his employ, fraudulently refused to retransfer the certificate to his employer. Held, on ground of fraud, that a Court of Equity would compel the agent to assign the certificate in blank and deliver the same to his employer.

The Court said:

> "It is a misapprehension to suppose, as counsel for the plaintiff in error seem to, that we held in Barclay *vs.* Smith, 107 Ill., 349, that there are no property rights of any kind in a certificate of membership in the Board of Trade of the City of Chicago. We simply there held that such a certificate is not property which is liable to be subjected to the payment of the debts of the holder by legal proceedings. We did not intimate that from the nature of a certificate of membership in the Board of Trade it could not, by statute, be subjected to the payment of debts, but only that under the law as it now is it cannot be. Whether property shall be liable to be subjected to the payment of debts by legal proceedings, and if so in what manner, is purely a matter of statutary regulation."

Dos Passos, in his book on "Stock Brokers and Stock Exchanges," pages 87 and 88, referring to the law of Pennsylvania relating to the Philadelphia Stock Exchange, says:

> "The owner cannot sell the seat to a person whom the body will not recognize. He cannot devise or bequeath the same so that his heirs or personal representatives will be able to use and enjoy it as the testator has, for the seat is a mere personal privilege, dying with the member and not containing any inheritable qualities.
>
> "The proceeds of his seat, it is true, may belong to his personal representatives, but the franchise or

right of exercising the occupation of broker in the Exchange is gone.

"By the rules of the Philadelphia Stock Exchange, that a member might sell his seat to any person whom the Association should elect; that the proceeds of such sale shall belong to the creditors of the owner who are members of the Association, and the balance, after paying their claims, shall go to the owner. The Court held that such seat was not property subject to execution in any form."

In the case of Nichols *vs.* Eaton, 91 U. S. R., 716, involving the passage to an Assignee in Bankruptcy of the beneficial interest of a bankrupt *cestui que trust* in an estate held by Trustees, who were given discretionary powers under the donor's will of withholding or paying over to him all or part of the beneficial interest, principal or income, in event of his bankruptcy; coupled with a positive direction as to the final disposition of the fund in event of the death of the *cestui que trust* prior to the exercise of such discretionary payments—this Court ruled that interest of the *cestui que trust* was not a property right vested in him which he could transfer or which would pass to his assignee in bankruptcy.

Mr. Justice Miller said:

(Page 724):

"No case is cited, none is known to us, which goes so far as to hold that an absolute discretion in the Trustee—a discretion which by the express language of the will he is under no obligation to exercise in favor of the bankrupt—confers such an interest in the latter that he or his assignee in bankruptcy can successfully assert it in a court of equity or any other court. As a proposition, then, unsupported by any adjudged case, it does not commend itself to our judgment on principle."

(Page 725):

"When trustees are in existence and capable of acting, a Court of Equity will not interfere to control them in the exercise of a discretion vested in them by the instrument under which they act.

"But the doctrine that the owner of property, in the free exercise of his will in disposing of it, cannot so dispose of it, but that the object of his bounty, who parts with nothing in return, must hold it subject to the debts due his creditors, though that may soon deprive him of all the benefits sought to be conferred by the testator's affection or generosity, is one which we are not prepared to announce as the doctrine of this Court. If the doctrine is to be sustained at all, it must rest exclusively on the rights of creditors. Whatever may be the extent of those rights in England, the policy of the States of this Union, as expressed both by their statutes and the decisions of their Courts, has not been carried so far in that direction."

(Page 726):

"In this country all wills and other instruments creating such trust estates are recorded in public offices, where they may be inspected by every one; and the law in such cases imputes notice to all persons concerned of all the facts which they might know by the inspection. When therefore it appears by the record of a will that the devisee holds this life estate or income, dividends or rents of real or personal property, payable to him alone, to the exclusion of the alienee or creditor, the latter knows that, in creating a debt with such person, he has no right to look to that income as a means of discharging it. He is neither misled nor defrauded when the object of the testator is carried out by excluding him from any benefit of such a devise."

(Pages 729 and 730):

"Other objections have been urged by counsel, such as that the bankrupt is himself one of the Trustees of the trustees of the will, and will exercise his discretion favorably to himself. But there are two other Trustees and it requires their joint action to confer on him the benefits of this trust. It is said that one of them is mentally incompetent to act; but this is not established by the testimony. It is said also, that, since his bankruptcy, the defendant, Amassa, has actually received $25,000 of this fund; and that should go to the assignee, as it shows conclusively that the objections to the validity of the will were well founded.

"But the conclusive answer to all these questions is, that, by the will of the decedent—a will, which we have shown, she had a lawful right to make the insolvency of her son terminated all his legal vested right in her estate, and left nothing in him which could go to his creditors, or to his assignee in bankruptcy, or to his prior assignee; and that what may have come to him after his bankruptcy through the voluntary action of the trustees, under the terms of the discretion reposed in them, is his lawfully and cannot now be subjected to the control of his assignee."

In the later case of Hyde *vs.* Woods, 94 U. S. Rep., 523, the Supreme Court further held that the rules of law, as announced in Nichols *vs.* Eaton, would apply with equal force to the status of a membership in the San Francisco Stock Exchange, in that the exchange rules were law as to its members, and contravened no law of public policy; and thereunder, that the Governing Board acted as Trustee, holding arbitrary power and control over all transfers of membership and elections, exercisable in the absolute discretion of the Board, for the benefit of the entire body; and that the voluntary exercise of these powers was not subject to control by the Courts in the interest of an individual member or of a person claiming through him. Which clearly indicates the conclusion of the Court that the individual member has no power or control over the transfer or disposition of his active membership as a property asset.

Hyde *vs.* Woods is the leading Federal case on the subject of stock exchanges, and whilst the actual dispute in that case involved merely a point on the question of preference amongst the bankrupt's creditors in the distribution of a fund in the hands of the San Francisco Stock Exchange; yet it has been followed, as a precedent, by the inferior Federal Courts and the various State Courts, whose interpretations of its dictum, and the applications of the doctrine therein expressed, have been so widely divergent that the laws of the several States pertaining to their respective exchanges, each purporting to follow Hyde *vs.* Woods, are irreconcilable to each other.

In this cause, therefore, it is necessarily important that this Court should finally pronounce the scope, latitude, force and effect of its former decision, should its decree be construed to control the general status of memberships in the different Exchanges throughout the various States under whose laws they were created and exist.

The controversy in Hyde *vs.* Woods arose under the following facts: Thomas W. Fenn became a member of the San Francisco Stock Exchange in 1871; on August 20, 1872, he became delinquent, failing to fulfill his contracts with other members of the board, assigning his seat to Woods, a creditor member in the board; and the Exchange, in accordance with its rules, sold his membership for $10,000, and distributed the fund amongst his creditors in the Exchange, whose claims exhausted the fund. Fenn subsequently became bankrupt on October 1, 1872, and his assignee in bankruptcy brought action in the Circuit Court against Woods to recover the fund, alleging that distribution of such fund amongst Exchange members to the exclusion of outside creditors was an unjust preference and void under the Bankruptcy Act of 1867, and that the fund should be distributed *pro rata* amongst all of the bankrupt's creditors.

The lower Court entered a decree for the defendant, whereupon the assignee in bankruptcy appealed the case to the Supreme Court, and this Court confirmed the judgment.

Mr. Justice Miller delivered the opinion of the Court in the following language; set forth in full:

> "The San Francisco Stock and Exchange Board is a voluntary association for business purposes, organized in 1862 in that city. The membership is elective, with certain provisions for a right to sell and assign the seat, subject to an election of the purchasing member by the Board. This is generally done unless special reasons appear to the contrary; and the result is that, as the number of members is limited, the right to a seat at the Board has a moneyed value. When a member fails to perform his contracts or becomes insolvent, he can no longer be a member of the Board until he resumes pay-

ment ; but his seat may be sold for his benefit or for that of his creditors among the other members of the Board. Article 15 of the Constitution of the Board provides that 'in sales of seats for account of delinquent members, the proceeds shall be applied to the benefit of the members of this Board, exclusive of outside creditors, unless there shall be a balance after payment of the claims of members in full.'

"Thomas W. Fenn, who became a member of this Board October 21, 1871, was declared a bankrupt October 1, 1872, and plaintiff in error was appointed his assignee. On the 24th day of August preceding Fenn became a delinquent by failing to fulfill his contracts with members of the Board, and thereupon made and delivered to defendants in error an assignment of his seat in said Board, with authority to sell the same to the best advantage, and apply the proceeds of sale to payment of all debts due from him to the members of said Board.

"They did sell it for $10,000 ; the purchaser was duly elected and installed, and the money paid to creditors, who were members of the Board, including $2973.30 to defendants.

"Upon these facts found by the Circuit Court, sitting without a jury, the counsel for plaintiff asks a reversal of the judgment of that Court in favor of defendants, on the ground that the assignment by Fenn to the defendants and their receipt and disbursement of the $10,000 were preferences within the meaning of the Bankrupt law, and that they are therefore liable to him as assignee for the amount received.

"There can be no doubt that the ownership right which Fenn had to this seat when he became bankrupt was property, and the sum realized by the assignees from its sale proves that it was valuable property. Nor do we think there can be any reason to doubt that, if he had made no such assignment, it would have passed, subject to the rules of the said Board, to his assignee in bankruptcy, and that if there had been left in the hands of the defendants any balance after paying the debts due to the members of the Board, that balance might have been recovered by the assignee.

"It is very ingeniously argued by counsel for the assignee that being property of the bankrupt, he had no

right to make the disposition of it which he did, by preferring his creditors who were members of the Board to those who were not. The answer to this, so far as Fenn's assignment to defendant is concerned, is that the part of it which gives this direction to the proceeds of the sale was wholly unnecessary and nugatory; for if the Article of the Association which we have recited in full was effective, it controlled the disposition of those proceeds; if it is void, or for any other reason ineffectual, then it must be considered that the assignment of Fenn was an unlawful preference, within the meaning of the Bankrupt law. The question turns solely upon the validity of that Article of the Association.

"There is no reason why the Stock Board should not make membership subject to the rule in question, unless it be that it is in violation of some statute or of some principle of public policy. It does not violate the province of the Bankrupt law against preference of creditors, for such a preference is only void when made within four months previous to the commencement of the bankruptcy proceedings. Neither the Bankrupt law nor any principle of morals is violated by this provision, so far as we can see. A seat in this Board is not a matter of absolute purchase. Though we have said it is property, it is encumbered with conditions when purchased, without which it could not be obtained. It never was free from the conditions of Article 15, neither when Fenn bought it, nor at any time before or since. That rule entered into and became an incident of the property when it was created, and remains a part of it into whose hands soever it may come. As the creators of this right—this property—took nothing from any man's creditors when they created it, no wrong was done to any creditor by the imposition of this condition.

"The fundamental vice of plaintiff's argument is to treat the case as though Fenn, owning this property absolutely as his own without restriction, had then fettered it, of his own accord, with the condition that it must always stand encumbered by a preferred lien of his fellow-members.

"It is said that it is against the policy of the bankrupt law, against public policy, to permit a man to

make in this or any other manner a standing or perpetual appropriation of his property to the prejudice of his general creditors, and it is to this point that the numerous authorities of counsel are cited. They all, however, relate to cases where a man has done this with property which was his own property on which he himself imposed this direction, or the incumbrance, which impeded creditors.

"It is quite different where a man takes property by purchase or otherwise which is subject to that direction or disposition when he receives it. It is no act of his which imposes the burden. It was imposed by those who had a right to do it, and to make it an accompaniment of any title which they gave to it.

"The principle here contended for by counsel was well considered in the recent case of Nichols, assignee, *vs* Eaton, 91 U. S. R., 716. In that case the mother of the bankrupt [Eaton] had bequeathed to him by will the income of a fund, with a condition in the trust that on his bankruptcy or insolvency the legacy should cease and go to his wife or children, if he had any, and if not, it should lapse into the general fund of the testator's estate and be subject to other dispositions. The assignee of the bankrupt sued to recover the interest bequeathed to the bankrupt, on the ground that this condition was void against public policy.

"But this Court, on a full examination of the authorities both in England and in this country, held that the objection was not well taken; that the owner of the property might make such a condition in the transfer of that which was his own, and in doing so violated no creditor's rights and no principle of public policy.

"The case of Nicholson, Assignee, *vs.* Gouch, 5 El. & Bl., 999, was in many respects very much like the present, the action having been brought to recover certain property which under the rules of the Exchange, of which the bankrupt was a member, had been received and paid to his fellow members. This was asserted to be a preference void by the bankrupt law, and the rules of the Exchange under which it was done were assailed on the same ground taken here. It is true that in the decision of the Queen's Bench in *banc*, Lord CAMPBELL, the Chief Justice, ruled against the

plaintiff on the ground that the money in question arose out of wagering contracts, which, as they could not have been enforced by the bankrupt, were therefore not subject to the claim of the assignee.

"But CROMPTON, *J.*, held also that the money being received and distributed under the rules of the Stock Exchange, by reason of the bankrupt having become a member subject to said rules, this was a sufficient defence to the party who received and distributed it.

"Judgment affirmed."

The foregoing decision established the following points:

First.—The rules of government of the San Francisco Stock Exchange, or similar organizations, are binding upon its members, and the provisions thereof relating to payment of debts due to creditor members out of the proceeds of a seat if sold, to the exclusion of general creditors, do not violate any statute or principle of public policy against preference of creditors.

Second.—The Exchange is clothed with discretionary powers of a trustee for the benefit of the entire Board over the disposition and transfer of memberships, and the free exercise of these powers will not be interfered with by the Courts in behalf of a member or one claiming through him.

Third.—When the Exchange, under its rules, has previously exercised its discretionary powers of liquidation of a membership for any cause, thereby creating its conversion into a fund for the purposes contemplated in its regulations, should there be left in the hands of the Exchange any residue of the fund after carrying out such provisions, payable to the delinquent or retiring member, this residue in its hands constitutes property, which will, when ascertained, pass to an assignee in bankruptcy for the benefit of his general creditors.

It is readily seen that the actual points raised in Hyde *vs.* Woods did not involve the passage to the assignee in bankruptcy of the active privileges of membership enjoyed by a member in good standing, as in the present cause. The

membership of Fenn had absolutely ceased and determined, prior to his bankruptcy, and the dispute was on the simple question of preference amongst creditors in the distribution of a fund in the hands of the Exchange, the proceeds of its executed trust, under Rule 15 of the San Francisco Stock Exchange, *supra*, page 26, created not by any action of the member, but through the exercise of discretionary powers reposed by the rules in the Governing Board; held and distributed by it amongst the delinquent's creditors in the Exchange in accordance with its regulations. By virtue of this conversion the Exchange had released him from the obligation of membership, and had withdrawn his membership privileges from him, and his status with the Exchange at the time of his bankruptcy was as that of any other stranger for whom it might hold a fund in remainder, subject to the adjustment and payment of certain prior rights and obligations due the Exchange and to creditor members. The balance of this fund remaining after such payments, when ascertained by mathematical calculation, was payable to him under the rules, and, therefore, would pass as property to his assignee in bankruptcy, or might be attached by his general creditors.

The portion of the opinion of Mr. Justice MILLER in the above case upon which the lower Court has erroneously laid stress as conclusively controlling the cause at issue is found in the following expression:

> "There can be no doubt that the incorporeal right which Fenn had to this seat when he became bankrupt was property, and the sum realized from its sale proves that it was valuable property; nor do we think there can be any reason to doubt that if he had made no such assignment it would have passed subject to the rules of the Stock Board to his assignee in bankruptcy, and that if there had been left in the hands of the defendant any balance after paying the debts due to the members of the Board, that balance might have been recovered by the assignee." (Record, p. 8).

The facts show that when Fenn became bankrupt, his membership had previously terminated by the action of the

Exchange; therefore, "The incorporeal right which Fenn had to this seat when he became bankrupt,"—could only have referred at that time to his vested interest in the possible residue or balance then in the hands of the Exchange as the proceeds of its executed trust; such balance, MR. Justice MILLER says—"might have been recovered by theassignee."

That the dictum of MR. Justice MILLER did not apply the rule of law in the comprehensive sense interpreted by the lower Court is shown by his comments upon and reaffirmation of the legal principles expressed by the Supreme Court in the case of Nichols, assignee, *vs.* Eaton, (*supra* page 22) as applicable with equal force to the control by an exchange over its members and in the exercise of discretionary powers conferred upon its Governing Board, relative to the disposition of membership rights and privileges. Thus recognizing the analogous position of the spendthrift *cestui que trust* to that of the active member in an exchange—in that neither held tangible property rights which he could by any act of his own encumber or dispose of, or which would pass to his assignee in bankruptcy.

And the Supreme Court, in confirming the decree of SAWYER, *C. J.*, (Hyde *vs.* Woods, 2 Sawyer, 655) clearly signifies its approval of that Judge's expression of opinion, wherein he said:

> "Each member holds his seat and exercises the privileges conferred, subject to certain prescribed rights of the association and of the other members in his seat, in case he fails to perform his duty towards the association or to his fellow members." * * *

and should he fail in his obligations in the course of business of the board, and he be suspended and is not restored within the time limit—

> "his rights and privileges as a member become the property of the association, and are disposed of for the benefit of his creditors in the board to the exclusion of all others."

> "He cannot himself by an act or disposition of his own, prevent this result. * * * His general creditors can obtain through him no greater rights of property than he himself possesses. His privileges as a member of the Stock Board could not be seized or sold on execution and transferred to another in violation of the rights secured by the contract of association, nor could a Court of Bankruptcy override the rights of the association or of its members secured to them by the terms of the contract under which he acquires any rights at all as a member, by disposing of a greater interest than he himself possesses. * * * The only property of a pecuniary nature in Fenn, after his default in the board, would be the residue left after disposing of his seat by the Board in accordance with its prescribed usages, or with the assent of the Board and the payment of his indebtedness to the members of the Board incurred in the transactions of its business. This is all, under any circumstances, would be available to the general creditors or with which the Court of bankruptcy has any concern. * * * The prior rights of his co-members accrued by virtue of the very act by which Fenn acquired any rights at all as a member of the board, and they cannot be divested."

The termination of the contract of membership and release from its continuing obligations under the initial agreement with co-members can only occur by the grace and favor of the Board, previously expressed; this is not a vested right of the individual, nor is it a legal contingency; and the Courts have no control to enforce its exercise by the Board in favor of an individual member or in the interest of his general creditors, by adversary proceedings.

The lower Court, in the cause at issue, erred in the expression of its opinion, where it says:

> "The material inquiry before us is not whether the seat could have been attached or taken in execution, but whether it was property which Page prior to his bankruptcy could have transferred." (Record, page 13.)

in view of the absolute immunity and freedom of membership seats in the Philadelphia Stock Exchange from the

recourse of creditors and from liability or subjection to the payment of debts by legal process under the law of Pennsylvania, the bankrupt's domicile, which is clearly established by well-defined legal doctrines and authorities, conclusively showing that active membership in such organizations, if property, is exempt from the claims of creditors under the State law, and, therefore, also under the provisions of the Bankrupt Act of 1898.

In the case of Mulford *vs.* Shirk, 26 Penna., S. R., 474, an early case interpreting the exemption laws under the Acts of the State Legislature, it was held that a reservation in a deed of assignment for the benefit of creditors, of an exemption prescribed by law, is not a fraud upon creditors, because such reservations is not within the reason of the rule.

In the language of Justice WOODWARD:

> "Though expressed in the assignment, it is not created by it, but by the Act of Assembly, and it does not tend to delay or hinder creditors, because by law they never could appropriate it as part of the debtor's estate, his creditors are not hindered by his keeping what they had no right to touch. * * * Where upon the face of an assignment it should appear that but part of the debtor's estate was intended to pass, such reservation would not perhaps be tolerated, for the presumption would seem reasonable that he had retained all that the law exempts, but where, as in the case before fore us, he gives up all but what the law restrains his creditors from selling, they have no reason to complain."

In Heckman *vs.* Messinger, 49 Pa., S. R., 468, the objection was raised that it is only in the case of compulsory process that the law allows a debtor the exemption. The Court, however, did not dignify the objection by any comment, but ruled the case by the decision in Mulford *vs.* Shirk (*supra*).

In the case of Nichols, Assignee, *vs.* Eaton, 91 U. S. R., 726 (*supra*,), Mr. Justice MILLER said:

> "It is believed that every State in the Union has passed statutes by which a part of the property of the

debtor is exempt from seizure or execution or other process of the courts, in short, is not liable to the payment of his debts. This exemption varies in its extent and nature in the different States. In some it extends only to the merest implements of household necessity; in others it excludes the library of the professional man, however extensive, and the tools of the mechanic; in many it embraces the homestead in which the family resides. This has come to be considered in this country as a wise, as it certainly may be called a settled, policy in all the States. To property so exempted the creditor has no right to look and does not look as a means of payment when his debt is created; and while this Court has steadily held, under the constitutional provision against impairing the obligations of contracts by State laws, that such exemptions when first enacted were invalid as to debts then in existence, it has always held that as to contracts made thereafter the exemptions were valid. This distinction is well founded in the sound and unanswerable reason, that the creditor is neither defrauded nor injured by the application of the law to his case, as he knows when he parts with the consideration of his debt that the property so exempt can never be made liable to its payment. Nothing is withdrawn from this liability which was ever subject to it, or to which he had any right to look for its discharge in payment. The analogy of this principle to the devise of the income from the real and personal property for life seems perfect."

The case *in re* Beckerford, 1 Dillon, 46, involved the question of allowance to a bankrupt in Missouri of a homestead exemption out of a leasehold estate, where the State laws were silent upon the direct question.

The Court in deciding the matter affirmatively, said:

"The laws of Missouri in 1864 exempted, among other property from sale under execution or other process, when owned by the head of a family or wife, who shall be a *bona fide* resident of the State, any of his or her real estate not exceeding 160 acres of farm land, or one lot in a town or city in value $1000 at the date of such exemption, to be held and enjoyed by such party as a homestead." * * *

"The language of the Missouri statute in reference to title is that he or she must be the owner of the real estate, in order to have the homestead exempted. It is argued that there can be no such ownership as the law here contemplated, in a leasehold estate, and hence no homestead can be carved out of it. By the 17th section af the Missouri statutes, relating to exemptions, it is enacted that leases upon land for any unexpired term of three years and more shall be subject to execution, and sold as real property. * * * The term 'real property' is defined by the 38th section of the general provisions of the same statute, as including every estate, interest and right in land. These provisions seem to us to solve the question suggested in favor of the bankrupt, entitling him to have a homestead set apart in the leasehold owned by him at the time he was declared a bankrupt." * * *

"'Congress shall have power to establish uniform laws on the subject of bankruptcy throughout the United States' is the language of the Constitution, by which a grant is made.

"It is obvious from the language employed that the uniformity here referred to was a uniformity among the States. If Congress saw cause to pass bankrupt laws under the grant of power referred to, the injunction is that they shall be uniform throughout the United States. So far as the distribution of the bankrupt's assets—the point under consideration—is concerned, the law is uniform. When viewed with reference to the State exemption laws, there is a uniformity which, on reflection, readily suggests itself. Though the States vary in the extent of their exemptions, yet what remains the Bankrupt law distributes equally among the creditors.

"Nor does the bankrupt law in any way vary or change the rights of the parties. All contracts are made with reference to existing laws, and no creditor could recover more from his debtor under the State laws than the unexempted part of his assets, the very thing that is attained by the bankrupt laws, which, therefore is strictly uniform.

"To establish the uniformity contended for would have made it necessary for Congress to have virtually abrogated all State exemption laws. In doing so it

would necessarily have legislated against the debtor class, by making whatever property was exempt at the time of contracting, subject to distribution. This certainly would not have tended either to uniformity, justice or equality."

In re Ruth, 6 Phila. Rep., 438 (U. S. D. Ct.) CADWALADER, *J.*, said:

"Proceedings in Bankruptcy resemble in many respects, a general execution for the equal benefit of the creditors. It is foreign to the purpose of proceedings under bankruptcy act that they should operate upon property otherwise exempt from an execution, unless it is thus exempt under defective previous laws, which the bankrupt law is, in this respect, intended to improve. Under the present bankrupt law no such change was intended. On the contrary, the previous uniform system under State laws, of exemption in the Federal and State courts is continued, as it had been established under the Act of Congress of 1828 and under subsequent rules of the Federal Courts authorized by this Act. In this respect the bankrupt law merely provides that the State exemption laws, thus previously adopted, shall still apply so as to exclude their subjects from the operation of the proceedings in bankruptcy."

In re Appold, 6 Phila. Rep., 469, the Court said:

"Returning to the main point in question it may be added that the Bankrupt law of 1867 does not, in general, vest in the Assignee any more beneficial interest in the debtor's estate than his execution creditors could, under the laws of the respective States already in force, have obtained under adversary proceedings."

"The system of bankruptcy is, in a relative sense, uniform throughout the United States when it operates uniformly upon whatever would thus have been available to the recourse of execution creditors if the bankrupt law had not been enacted." "The assignee in bankruptcy will, in the present case, obtain what would have been obtainable for the benefit of an execution creditor under the law of Pennsylvania.

"That less or more may, perhaps, be obtainable in another State does not prevent the operation of the

bankrupt law from being, in a constitutional sense, uniform."

In re Jordan, 8 N. B. R. 180 Fed. Case 7514 (1873) the Court said:

"A bankruptcy Court adjusts the rights of creditors and administers the effects of bankrupts, subject to the charges whether by way of lien or exemption which are created by the laws of the State in which said Court is held, or the property, if real, is situate."

In re Preston, 6 N. B. R. 545, GREEN, J., said:

"'The bankrupt is remitted to such rights and remedies in the exempted property as any other man not a bankrupt has in his own property, with this exception: that this Bankruptcy Court will protect him in the enjoyment of his exempt property against all acts and claims contrary to the bankrupt law.'"

The general law of Pennsylvania is founded upon the jurisprudence of the common law, excepting so far as the same may be changed or modified by statutes under the State Constitution, which enactments are subservient to judicial interpretation by the State Courts of their constitutionality, scope and legality on general grounds of public policy.

The Act of Assembly, of January 28, 1777, Sec. 2, 1 Sm. L. 429, referring to the Common Law of England in force in the Province of Pennsylvania, prior to our rational independence, provides:

"That each and every one of the laws or acts of General Assembly, that were in force and binding on the inhabitants of the said province on the fourteenth day of May last, shall be in force and binding on the inhabitants of this State, from and after the tenth day of February next, as fully and effectually, to all intents and purposes, as if the said laws, and each of them, had been made or enacted by this General Assembly; and all and every person and persons whomsoever are hereby enjoined and required to yield obedience to the said laws, as the case may require, until the said laws or acts of General Assembly, respectively, shall be repealed or altered, or until they expire by their own limitation:

and the common law and such of the statute laws of England, as have heretofore been in force in the said province, except as hereinafter excepted."

The Act of Assembly of March 21, 1806, Section 13, 4 Sm. L., 332, provides:

"In all cases where a remedy is provided, or duty enjoined, or anything directed to be done by any act or acts of Assembly of this Commonwealth, the directions of the said act shall be strictly pursued; and no penalty shall be inflicted, or anything done agreeably to the provisions of the common law in such cases, further than shall be necessary for carrying such act or acts into effect."

The organization of this Stock Exchange does not exist by virtue of any enactment of the Legislature, but under the common law of the State, and its rules of organization and general status in the community are maintained solely by judicial interpretation of their force and effect. The State Supreme Court, its court of last resort, in ruling upon the legislative enactments relative to debtor and creditor, has expressly upheld and declared this immunity or exemption from liability as property, thereunder, in the unequivocal language of the Court, in Thompson *vs.* Adams, 93 Pa. S. R., 55 (*supra*, page 13).

"The seat is not property in the eye of the law; it could not be seized in execution for the debts of the members."

And the Court further expresses its reasons for recognizing this common law immunity or exemption from execution, in the following words:

"It is the mere creation of the Board, and of course, was to be held and enjoyed with all the limitations and restrictions which the Constitution of the Board chose to put upon it."

And in the case of Pancoast *vs.* Gowan, *supra*, page (13) the Court said:

"A seat in the Board of Brokers is not property subject to execution in any form.

"It certainly could not be levied on and sold under a *fi. fa.* The sheriff's vendee would acquire no title which he could enforce, nor is it within either the words or the spirit of the Act of June 16, 1836, Sec. 35, Pamph. L. 767, providing for attachment on judgment."

All acts of the Legislature in Pennsylvania relating to exemptions, commonly known as the "Exemption Acts," declare that property of the debtor, to a certain amount or of certain character, "shall be exempt from levy and sale on execution or by distress for rent." (Brightly's Purdon's Digest, title, Execution, Section VI, "Of the Exemption from Execution.")

Pendleton, in his book entitled "Debtors' Exemption in Pennsylvania," Chapter I, "Property not subject to execution and not distrainable for rent," page 19, says:

"There are two classes of property exempt from levy and sale on execution and by distress for rent, namely, property which is subject to neither process, and property subject to either process, but from the lien of which a portion or all of the property levied upon not exceeding a certain value may be withdrawn at the option of the debtor.

"While it is the main object of the present treatise to consider the law as developed by the provisions of what are commonly called the Exemption Acts, it is thought advisable to preface the principal discussion by a few remarks upon the different kinds of property upon which neither an execution nor a distress warrant can be legally levied.

"It will be found that the exceptions to the rule of general liability are, in the main, dictated by the considerations of public policy, as not applicable as subjects under the provisions of what are commonly called the 'Exemption Acts.'

"It is held at common law that wearing apparel and other articles upon the person cannot be seized by an execution or taken under distress for rent; and the immunity of a tenant is extended to articles in actual use, as the horse he is riding, or the horse and carriage he is driving (Kent Comm. Bk. III., 479), this com-

mon law rule is recognized in the provisions of June 16, 1836, 24, 25 (Purd. Dig. Ex. 636)."

And on page 22, under the above chapter heading, he further says:

"The right to a seat in the Philadelphia Stock Exchange is not such property as can be seized and sold in execution."

Dos Passos, in his book on "Stock Brokers and Stock Exchanges," page 87, referring to the law of Pennsylvania, says:

"The Courts have uniformly held that the right of a member to a seat in a stock exchange cannot be attached or seized in execution."

The Act of June 16, 1836, Section 35, P. L. 729, provides:

"That every insolvent shall be entitled to retain all such articles as may by law be exempted from levy and sale upon execution."

The same Act, Section 38, provides:

"Every such debtor shall be entitled, notwithstanding his assignment, in conformity with this Act, to retain for the use of himself and family all such articles as are or may be by law exempted from levy or sale on any execution, or from distress for rent, and the property in such articles shall not pass to his trustees."

It will be thus seen that the Pennsylvania exemption laws, in every instance of statutory legislation, merely provide *exemption* from levy and sale on execution or distress for rent, leaving in the debtor the free exercise of his right to retain or dispose of the exempt property as he may please, without interference or restriction. The State law absolutely relieves membership in the Philadelphia Stock Exchange from the rules of inclusion as property subject to or liable for the payment of debts of the members under any of the acts of the Legislature; and, under the common law of the State, as interpreted and established by its Supreme Court, such membership is expressly *exempt* from execution in any form.

Bouvier's Law Dictionary gives as the definition of the word—

> EXEMPTION: "A privilege which dispenses with the general rule."

The Century Dictionary and Cyclopedia expresses the definition—

> EXEMPTION: "The act of exempting; the state of being exempt; freedom from some undesirable requirement or condition; immunity; dispensation."

Anderson's Dictionary of Law expresses the meaning—

> EXEMPTION: "The privilege of being excepted, excused or freed from the operation of a law."
>
> EXEMPTION LAWS: "Specifically, laws which except a part of a debtor's property from seizure on execution, or other process, as not liable to the payment of his debts."

The term "exemption," as defined by these acknowledged authorities, clearly brings within the scope of its general meaning the immunity of membership in the Philadelphia Stock Exchange from the recourse of creditors, and from subjection to execution for the debts of the members under the laws of Pennsylvania; which is in absolute concord with the ruling of the United States Supreme Court, in the case of Nichols, assignee, *vs.* Eaton (*supra*, page 33), relating to the application of the Exemption laws in the State of Rhode Island, under the Bankruptcy Act of 1867, involving the status, thereunder, of a spendthrift trust. In this case, MR. Justice MILLER, after commenting upon the constitutionality of State Exemption Acts and the equable justice of their purposes; under the general law of the State, says: "The analogy of this principle to the devise of income from the real and personal property for life seems perfect."

In Thackara *vs.* Mintzer, 100 Penna. S. R., 151, it was held that the creation, under the common law, of a spendthrift son trust in due and legal form exempts the income

of the beneficiary in the hands of the trustee from attachments to enforce the payment of alimony decreed against the said beneficiary in proceedings for divorce a *mensa et thoro* instituted against him by his wife.

MR. Justice MERCUR said :

"It is contended that the character of the debt in this case, on which the attachment issued, is not within the meaning of the testator's exemption. It is for alimony awarded by the Court to the wife of George, after a verdict and judgment against him, for a divorce *mensa et thoro*, in her favor. The attachment issued on a debt of record fixed by judgment and decree. Whether the judgment be for a breach of contract or for a tort, matters not. The testator recognized no such distinction. He impressed on the fund exemption from all kinds of legal process against the trustee, not only for debts, but for 'all liabilities whatever' of George."

In Board of Charities *vs.* Lockard, 198 Pa. S. R., 574, the Court said :

"The general validity of spendthrift trusts in Pennsylvania is thoroughly well settled, and it is not now an open question. The present case is ruled directly by that of Thackara *vs.* Mintzer, 100 Pa., 151. It was there argued that an intention to exempt an income payable to the *cestui que trust*, from liability for the support of his family would be contrary to the policy of the law. This Court, however, held that no such distinction could be recognized. The testator impressed on the fund exemption from all kinds of legal process against the trustee. He made no distinction in the character of the obligations which might rest upon his son."

The Act of April 22, 1850, Section 20, P. L., 553, provides :

"The true intent and meaning of the Act of Assembly to secure the rights of married women, passed the eleventh day of April, A. D. 1848, is and hereafter shall be, that the real estate of any married woman in this Commonwealth shall not be subject to execution for any debt her husband, on account of any interest he may have or may have had therein, as

tenant by the courtesy; but the same shall be exempt from levy and sale for such debt during the life of said wife."

In Hesseltine *vs.* Prince, 2 A. B. R., 600 (U. S. D. Ct. in Mass., 1899), it was held that the estate by courtesy initiate which a bankrupt has in the property of his wife during her lifetime, is not property that passes to his trustee in bankruptcy.

The Court said:

"The rights of the husband in the property of his wife are limited by the statutes of Massachusetts, and this Court is governed by the interpretation put upon those statutes by the Supreme Court of the Commonwealth. In Lynde *vs.* McGregor, 13 Allen, 182–184, it was said by Mr. Justice GRAY that 'these statutes are inconsistent with the hypothesis that the husband has any estate in his wife's land which he can convey separately during her lifetime, or which will pass to his assignees in insolvency.' The insolvent law of Massachusetts (Gen. St. c., 118–144) vested in the assignee in insolvency all the property of the debtor, which the latter could have lawfully sold, assigned or conveyed. This language is as broad as that of Section 70 (5) of the Bankrupt Act, and hence it must be taken that the husband's right in his wife's real estate above described does not pass to his trustee in bankruptcy."

The purpose of the Bankrupt Act of 1898 is not to punish the honest debtor but to secure his creditors in the uniform and just distribution of the proceeds of his property, which under State law is not freed from liability for his debts; preserving unto the debtor all rights, immunities and privileges in the character of exemptions, whether they be property or otherwise, which the State laws of his domicile uphold and protect unto him as free from the recourse of creditors and exempt from execution for the payment of his debts. The Act recognizes no distinction in the methods whereby exemptions may be created or established under State law, whether by Act of Legislature or under the common law, but in general terms incorporates all State

Exemption Laws within its provisions; as set forth in Section 6.–a:

> "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition."

In Steele *vs.* Buel *et al.*, 5 Am. B. Rep. 165,(U. S. D. Ct. of App., 8th Circuit, 1900) involving a controversy between a bankrupt in Iowa and his trustee over the disposition of an insurance policy which, under the laws of that State, was expressly exempt to him from levy and sale on execution, CALDWELL, C. J., referring to Section 6 of the Bankrupt Act of 1898, said:

> "This section establishes the rule of exemption in the most absolute and unqualified terms, and that rule is the State law. The expression 'this act shall not' is the exact legal equivalent of the expression 'nothing contained in this Act shall.' This rule of exemption, therefore, pervades the whole Act, and is to be read into every other section and provision of the Act."
>
> "If Congress had intended to diminish or lessen the State exemptions in any case, and particularly if it had intended to subject to the payment of the bankrupt's debts his policies of life insurance which were exempt under the State law, that intention would undoubtedly have found expression in clear and unmistakable language in Section 6."

(Referring to Section 70 of the Act, the Court said:)

> "The only right or title the trustee has to any of the bankrupt's property is acquired under this section. It vests the title of the property in the trustee, 'except in so far as it is to property which is exempt.' How is it to be known 'what is exempt?' There is but one source of information on that subject, and that is the State law adopted by Section 6, and the legal effect of this exception is precisely the same as if it read, 'except property which is exempt by State law.'"

In connection with the cause at issue, Section 70 of the Act reads:

> "The trustee * * * * shall in turn be vested by operation of law with the title of bankrupt, as of the date he was adjudged a bankrupt, **except in so far as it is to property which is exempt**, to all * * * * (5) property which, prior to the filing of the petition, he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

Confessedly, the creditors who, through the trustee, are now seeking to subject the bankrupt's membership seat to the payment of their debts, could not have so subjected it to the payment of their debts by executions or other legal process issuing either from the State or the Federal Courts. The same rule has obtained under the Bankrupt Acts, which have sometimes increased the exemptions, notably so under the Act of 1867 (Section 5045, Rev. St.), but have never lessened or diminished them.

It has always been the policy of Congress to exempt to debtors and bankrupts the property exempt to them by State law. Since the organization of the Federal Courts under the Judiciary Act of 1789, the law has been that creditors suing in those courts could not subject to execution property of their debtor exempt to him by the law of the State.

The intention of Congress is also clear, as expressed in the above Section, to apply the word "Exemption" in its broadest and most liberal sense, because such construction is necessary to include within the purposes of the Act the acknowledged laws of the States relating to such immunities or privileges characterized as exemptions, preserved to debtors domiciled in the various States, each being the law of a respective State, established upon widely divergent principles of custom and local requirement, entitled to equal recognition in the Federal Courts; in some instances inaugurated by acts of Legislature, and in others by judicial announcement and interpretation of their existence, force and

effect. In certain of the States these exemptions are large, whilst in others they are small; but the Bankrupt Act protects the bankrupt debtor therein, in every instance of its operation, as fully as though he was proceeded against in the State Courts of his domicile.

The questions of exemption arising under the present Bankrupt Act have occasioned much confusion in the Courts, and difficulty in their proper application; and the Bankruptcy Courts in the various States, and even in different judicial districts of the same State, have rendered conflicting decisions upon the same statement of facts relative thereto.

In the recent case *in re* Camp, 1 Am. B. Rep., 165, the District Court for the Northern district of Georgia, in ascertaining the right of a bankrupt resident of that State to an exemption out of partnership assets, the local statutes being silent thereon, very pertinently said:

> "In view of this conflict of authority elsewhere, it becomes important to ascertain the law of Georgia on the subject. There is nothing whatever in the Constitutional provisions with reference to homestead and exemptions, nor in the statutes of the State, which touches this question. The decisions of the Supreme Court, moreover, with one exception, which will be noticed hereafter, do not undertake to construe any State law, and are, therefore, not controlling on this Court to the extent that they would be, if such were the case. * * *
>
> "While it has not been suggested in the argument, an additional reason might perhaps be urged in favor of following the State law, because of the line of decisions which hold that, where the decisions of the State Court had become rules of property they would be followed by the Federal Court, and especially with reference to real estate. * * *
>
> "My conclusion is, therefore, that the duty of this Court is to follow the thoroughly considered and well settled law in Georgia on this subject."

Loveland, in his book, The Law and Proceedings in

Bankruptcy, page 333, in speaking of the exemptions allowed under the Act of 1898, says:

> "A bankrupt is entitled to the same exemptions as if proceeded against as a debtor under the State laws and to none other. In order to claim exemptions in bankruptcy he must comply with the requirements of the State law. If he fails to bring himself within the conditions and requirements of such law, the property claimed is not exempt from the operation of the bankrupt law, and the trustee should administer it for the benefit of creditors.
>
> "In applying these exemption laws the Bankruptcy Courts will adopt and follow the construction of them announced by the highest court of the State the statute of which is involved. If the State law has not been construed by the State tribunals, or if there is a conflict of opinion as to the meaning of a particular provision, the Courts of Bankruptcy are free to decide it. Otherwise they are bound by the interpretation given by the State Courts. These are familiar and well settled rules recognized by the United States courts with reference to State laws and constitutions generally."

The Constitution of the United States, by its provisions, leaves to the respective States the right to enact and prescribe laws for their internal government, so far as the same do not transcend the prohibitions of the National Government.

The Revised Statutes of the United States, Section 721, provide—

> "The laws of the several States, except where the Constitution Treaties or Statutes of the United States otherwise require and provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States in cases where they apply."

It is nowhere apparent in the present Bankrupt Act that it was intended in any respect to supersede the existing statutes of the United States, or the principles of declarative law in the States. Its provisions are directed and confined to the uniform administration, in avoidance of unjust preferences and frauds, for the general benefit of creditors and relief of debtors, upon all subjects constituting property or

assets within the conception of existing law, which are not otherwise exempt. And should the Federal Courts include as an asset of the debtor's estate a subject expressly preserved to him by State law as free from the recourse of creditors and not liable to the payment of his debts, whether or not such subject is considered to embody certain of the elements of tangible property, such course necessarily would deprive the debtor of an exemption, and give to the creditor an undue advantage by resorting to the Federal Courts, which is not a condition contemplated or authorized by the Act.

It is obvious that Congress did not intend to overthrow the well established rules of jurisprudence by inaugurating a procedure which would tend to discredit the rights of the States to regulate the rules of property within and under their jurisdictions, directly affecting their own citizens, which do not exceed their acknowledged legislative authority, as such course would at once lead to absolute discord in the Federal and State Courts upon the fundamental principles of National and State Government.

In the present cause, therefore, the controversy arising under the application of the common law in Pennsylvania must be interpreted with reference to State legislation.

In the interpretation of local laws involving rules of property, it is the policy of the Federal Courts to follow the construction placed upon such laws by the Court of Last Resort of the State, even though in the absence of such decision the Federal Courts might, on grounds of general jurisprudence, have decided differently on the facts: because, as expressed by the United States Supreme Court in the case of Shelby *vs.* Gray, 11 Wheaton, 361, "A fixed and received construction by a State in its own Courts makes part of the statute law."

In Burgess *vs.* Seligman, 107 U. S., 20, the Court, by BRADLEY, *J.*, said:

> "Since the ordinary administration of the law is carried on by State Courts, it necessarily happens that, by the course of their decisions, certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is.
>
> "But where the law has not been thus settled, it is the right and duty of the Federal Courts to exercise their own judgment, as they always do in reference to doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the State tribunals, the Federal Courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State Courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal Courts will lean towards an agreement of views with the State Courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the Courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid any unseemly conflict with the well-considered decisions of the State Courts."

The lower Court, in reaching its conclusion, should have recognized and followed the decisions of the Supreme Court of Pennsylvania, directly affecting and establishing the legal status and rights of membership in the Philadelphia Stock Exchange. Its inquiry should be, what is the settled law of Pennsylvania at the time its decision is made, established by Supreme Court rulings as well as by statutes. This constitutes the rule of property by which the rights of citizens

must be determined, and a departure from this rule deprives the citizen of the benefit of the laws under which he lives.

Green *vs.* Neal, 6 Peters, 291.
Nichol *vs.* Leavy, 5 Wallace, 441.
Eyster *vs.* Gaff, 91 U. S. R., 521.
In re Wyllie, 2 Hughes, 449.
McKenna *vs.* Simpson, 129 U. S. R., 507.
In re Stephens, 2 Bissell, 373.

In Green *vs.* Neal, 6 Peters 298, the Court said:

"In a great majority of causes brought before the Federal tribunals, they are called upon to enforce the laws of the States. The rights of parties are determined under these laws, and it would be a strange perversion of principle if the judicial exposition of those laws by the State tribunals should be disregarded. These expositions constitute the law and fix the rule of property. Rights are acquired under this rule; and it regulates all the transactions that come within its scope.

"If the construction of the highest judicial tribunal of a State forms a part of its statute law, as much as an enactment by the Legislature, how can this Court make a distinction between them? There could be no hesitation in so modifying our decisions as to conform to any legislative alteration in a statute; and why should not the same rule apply where the judicial branch of the State government in the exercise of its acknowledged functions, should, by construction, give a different effect to a statute from what had at first been given to it.

"The charge of inconsistency might be made with more force and propriety against the Federal tribunals for a disregard of this rule than by conforming to it. They profess to be bound by the local law, and yet they reject the exposition of that law which forms a part of it. It is no answer to this objection that a different exposition was formerly given to the Act which was adopted by the Federal Court. The inquiry is, what is the settled law of the State at the time the decision is made? This constitutes the rule of property within the State by which the rights of litigant parties must be determined."

The case of Nichol *vs.* Leavy, *supra*, involved the disposition of a certain species of trust in the State of Tennessee in application to payment of a judgment debt. The Supreme Court of the United States followed the interpretation of the Court of Last Resort in Tennessee placed upon a local statute. In the language of Mr. Justice SWAYNE:

> "The Supreme Court decided in the suits referred to that this statute embraces trusts in real estate and that it exempted the property in question from liability to judgment creditors. There can be no doubt of the power of the Legislature to pass the statute. Its wisdom and policy are questions with which we have nothing to do. Being a local statute and involving a rule of property, we adopt the construction which has been given to it by the highest judicial tribunal of the State."

In Eyster *vs.* Gaff, 91 U. S. R., 521, Mr. Justice MILLER said.

> "It is a mistake to suppose that the Bankrupt Law avoids of its own force all judicial proceedings in the State or other Courts the instant one of the parties is adjudged a bankrupt. There is nothing in the Act which sanctions such a proposition.
>
> "Having such jurisdiction, and performing its duty as the case stood in that Court, we are at a loss to see how its decree can be treated as null and void. * * * The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary."

In re Wyllie, 2 Hughes, 449, was a bankruptcy cause under the Act of 1867, involving an interpretation of the Homestead laws of the State of Virginia, decided by the District Court of the United States.

RIVES, *D. J.*, in his opinion, said:

> "I recognize it as an elementary principle at the foundation of the department to which I belong, that when called upon to decide upon rights of property in my district under the local laws of the State, I am bound thereby as the same are expounded by the State tribunals.

> "A statute consists not merely of its terms but of the judicial exposition thereof, so that if a law of the State has been construed by the highest Court of the State, I am bound by that construction and am relieved of all necessity of examining the same and forming my own opinion of what is already authoritatively settled for me. And this follows from the fact that I, like the State Judge, administer the laws of Virginia, when they settle the question submitted to me, and if I depart from them I am depriving the citizen of the benefit of the laws under which he lives."

McKenna *vs.* Simpson, 129 U. S. R., 507, was an appeal from the Supreme Court of Tennessee, in an action brought by an assignee in bankruptcy to set aside a certain conveyance of land in Tennessee on the ground of fraud.

This Court said:

> "The decision of a State Court as to what should be considered a fraudulent conveyance does not present any Federal question, nor does the application by the Court of the evidence in reaching that decision raise one."

The decisions quoted by the lower Court in support of its position in ordering a sale of this bankrupt's membership do not rule, nor are they analogous to the cause at issue.

In Sparhawk *vs.* Yerkes, 142 U. S. R. 1, the facts showed that Yerkes, a member of the Philadelphia Stock Exchange, became insolvent and made a general assignment for the benefit of his creditors; subsequently he was declared bankrupt and all his assets passed to his assignee in bankruptcy; his delinquency to creditor members in the exchange far exceeded the value of his seat if sold by it under its rules Realizing that no surplus could exist for the benefit of outside creditors, his assignee regarded it as valueless and, though he notified the Exchange of his appointment, did not press the claim as an interest in the seat. Subsequently Yerkes was discharged in bankruptcy, and by a compromise settlement with credit members, his seat not having been sold by the Exchange, he procured reinstatement of his membership.

Soon after the decision of Hyde *vs.* Woods, *supra*, several years later, the assignee, relying on that case, brought action to have Yerkes' membership decreed an asset of his bankrupt estate. This the Court refused on general grounds of laches, although it was shown that Yerkes had for some time after his bankruptcy and prior to the reinstatement of his membership paid his dues and assessments to the Exchange, having an understanding with his assignee for reimbursement from funds of his bankrupt estate, and although his creditor co-members had proved their claims in bankruptcy and had received dividends from his general estate. The Court held, however, that his settlement with creditor members and his reinstatement in the Board were purely voluntary considerations of his co-members to him, prior to which the seat had been considered as valueless by the assignee, if sold under the Exchange rules, and that he had virtually abandoned all expectant beneficial interest thereunder, and that any present value of the membership was a new accretion of Yerkes, through the beneficence of his associates, over which the assignee had no control whatever.

Mr. Chief Justice MILLER, in the opinion of the Court, said:

> "The policy of the bankrupt law (of 1867) was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities and enable him to take a fresh start."
>
> "Clearly the sale of the present membership to a nominee of the assignee, and the admission of such nominee upon the ouster of Yerkes cannot now be coerced, and if Yerkes' title is not open to attack, he cannot be decreed to account for the market value thereof to the extent in whole or in part of the dividends which the creditor members received."

Though the Court reaffirmed Hyde *vs.* Woods, upon the point that, had the Exchange realized on the membership when delinquent to creditor members, and had there been left in the hands of the Exchange a surplus, that such balance would have passed to the assignee in bankruptcy.

In re Ketchem, 1 Fed. Rep. 840, involved the passage of a seat in the New York Stock Exchange to an assignee in bankruptcy, the District Court for the District of New York decreed such seat to be an asset of the estate by interpretation of the particular provisions of the Exchange Constitution, in accordance with code of Civil Procedure of the laws of the State of New York. CHOATE, *J.*, referring to a contrary decision of a Federal Court in Illinois relative to a seat in the Chicago Board of Trade, said :

> "The case *in re* Sutherland, 6 Bissell, 526, can perhaps be distinguished from Hyde *vs.* Woods, and *in re* Gallagher on the grounds suggested in the latter case, that the right in that case was less distinctly a mere business character."

Thus the Court recognized that decisions rendered in other States, though ruling upon the same general subject, could not be accepted as controlling precedents because of the dissimilarity in the rules and regulations of the various Exchanges, and of the distinctive legal status of each, under the laws of their respective States.

In re Warder 10 Fed., 275, also 15 Fed. Rep., 789, was a similar decision under the New York laws, relating to a seat in the New York Produce Exchange, a chartered company, authorized to take and hold real and personal property in a large amount ; having elective membership upon uniform requirement of eligibility, each member holding a certificate of membership "transferable on the books to any person eligible to membership upon payment of transfer fee of $5.00, and any unpaid assessments," by simple assignment on the back of the same, as is customary with the ordinary certificate of stock.

The additional cases relied on by the appellee are decisions of the State Courts in States other than Pennsylvania, which merely declare upon the laws of their respective States, so far as such laws apply to and establish the legal status of memberships in their local Exchanges, under the particular provisions of their individual charters or

Constitutions and By-laws, all of which vary somewhat in character, rules and methods of government.

It is, therefore, submitted that in view of the positive decisions in Pennsylvania, rendered under the common law in force within the State, declaring that membership in the Philadelphia Stock Exchange does not constitute property in the eye of the law of Pennsylvania, and is not subject to execution in any form for the debts of the members—the lower Court erred in its refusal to recognize and follow the settled laws of Pennsylvania, as conclusive precedent in ascertaining the established property rights of this bankrupt, existing under and by virtue of those laws.

Further, that the Court erred in confirming the order of sale of the appellant's membership as an asset of his estate in bankruptcy, because such sale would deprive him of an exemption prescribed by the laws of the State of his domicile in force at the time of filing the petition.

GEORGE W. JACOBS, JR.,
Counsel for Appellant.